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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

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9 DAMIEN REESE,

Case No. 2:19-cv-01267-RFB-DJA

10 Petitioner,

ORDER

11 v.

12 JAMES DZURENDA, et al.,

13 Respondents.

14 This court dismissed petitioner Damien Reese's *pro se* 28 U.S.C. § 2254 habeas
15 corpus action as improperly commenced (ECF No. 5). Reese had filed an incomplete
16 application to proceed *in forma pauperis*; he failed to include the required financial
17 certificate or inmate account statements. 28 U.S.C. § 1915(a)(2) and Local Rule LSR1-
18 2. Judgment was entered (ECF No. 6).

19 Shortly thereafter, the Clerk received Reese's \$5.00 filing fee. Because the order
20 dismissing the case and the fee essentially "crossed in the mail" the court will vacate the
21 order dismissing the petition. The court has now reviewed the petition pursuant to Habeas
22 Rule 4, and it shall be docketed and served on respondents.

23 A petition for federal habeas corpus should include all claims for relief of which
24 petitioner is aware. If petitioner fails to include such a claim in his petition, he may be
25 forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C.
26 §2254(b) (successive petitions). If petitioner is aware of any claim not included in his
27 petition, he should notify the court of that as soon as possible, perhaps by means of a
28 motion to amend his petition to add the claim.

1 Petitioner has also filed a motion for appointment of counsel (ECF No. 2). There
2 is no constitutional right to appointed counsel for a federal habeas corpus proceeding.
3 *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428
4 (9th Cir.1993). The decision to appoint counsel is generally discretionary. *Chaney v.*
5 *Lewis*, 801 F.2d 1191, 1196 (9th Cir.1986), cert. denied, 481 U.S. 1023 (1987); *Bashor*
6 *v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), cert. denied, 469 U.S. 838 (1984). However,
7 counsel must be appointed if the complexities of the case are such that denial of counsel
8 would amount to a denial of due process, and where the petitioner is a person of such
9 limited education as to be incapable of fairly presenting his claims. See *Chaney*, 801
10 F.2d at 1196; see also *Hawkins v. Bennett*, 423 F.2d 948 (8th Cir.1970). Here, Reese's
11 petition is reasonably clear in presenting the challenges to his guilty plea that he wishes
12 to raise, and the legal issues are not particularly complex. Therefore, counsel is not
13 justified at this time. Reese's motion is denied.

14 **IT IS THEREFORE ORDERED** that this court's order dated August 19, 2019 (ECF
15 No. 5) is **VACATED**.

16 **IT IS FURTHER ORDERED** that petitioner's application to proceed *in forma*
17 *pauperis* (ECF No. 1) is **DENIED** as moot.

18 **IT IS FURTHER ORDERED** that the Clerk **shall file and ELECTRONICALLY**
19 **SERVE** the petition (ECF No. 1-1) on the respondents.

20 **IT IS FURTHER ORDERED** that the Clerk shall add Aaron D. Ford, Nevada
21 Attorney General, as counsel for respondents.

22 **IT IS FURTHER ORDERED** that respondents shall file a response to the petition,
23 including potentially by motion to dismiss, within **90 days** of service of the petition, with
24 any requests for relief by petitioner by motion otherwise being subject to the normal
25 briefing schedule under the local rules. Any response filed shall comply with the
26 remaining provisions below, which are entered pursuant to Habeas Rule 5.

27 **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents
28 in this case shall be raised together in a single consolidated motion to dismiss. In other

1 words, the court does not wish to address any procedural defenses raised herein either
2 *in seriatum* fashion in multiple successive motions to dismiss or embedded in the answer.
3 Procedural defenses omitted from such motion to dismiss will be subject to potential
4 waiver. Respondents shall not file a response in this case that consolidates their
5 procedural defenses, if any, with their response on the merits, except pursuant to 28
6 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If respondents
7 do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall do so within
8 the single motion to dismiss not in the answer; and (b) they shall specifically direct their
9 argument to the standard for dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*,
10 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses, including
11 exhaustion, shall be included with the merits in an answer. All procedural defenses,
12 including exhaustion, instead must be raised by motion to dismiss.

13 **IT IS FURTHER ORDERED** that, in any answer filed on the merits, respondents
14 shall specifically cite to and address the applicable state court written decision and state
15 court record materials, if any, regarding each claim within the response as to that claim.

16 **IT IS FURTHER ORDERED** that petitioner shall have **45 days** from service of the
17 answer, motion to dismiss, or other response to file a reply or opposition, with any other
18 requests for relief by respondents by motion otherwise being subject to the normal briefing
19 schedule under the local rules.

20 **IT IS FURTHER ORDERED** that any additional state court record exhibits filed
21 herein by either petitioner or respondents shall be filed with a separate index of exhibits
22 identifying the exhibits by number. The CM/ECF attachments that are filed further shall
23 be identified by the number of the exhibit in the attachment.

24 **IT IS FURTHER ORDERED** that the parties SHALL SEND courtesy copies of
25 pleadings and indices of exhibits only in this case to the Clerk of Court, 400 S. Virginia
26 St., Reno, NV, 89501, directed to the attention of "Staff Attorney" on the outside of the
27 mailing address label. Additionally, in the future, all parties shall provide courtesy copies
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1 of any additional exhibits submitted to the court in this case, in the manner described
2 above.

3 **IT IS FURTHER ORDERED** that petitioner's motion for appointment of counsel
4 (ECF No. 2) is **DENIED**.

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6 DATED: 27 March 2020.

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10 RICHARD F. BOULWARE, II
11 UNITED STATES DISTRICT JUDGE
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